

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BOBBY WELLS,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT
OF CORRECTIONS, ELENOR
VERNELL, MIKE ALBERT, LT.
BOBBY GREENE,

Defendants.

CASE NO. 13-0234 RJB/KLS

ORDER ADOPTING REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge Karen L. Strombom. Dkt. 35. The Court has considered the Report and Recommendation, objections, and the remaining file.

The facts and procedural history are contained in the Report and Recommendation (Dkt. 35, at 1-7) and are adopted here. The Report and Recommendation recommends that the Complaint be dismissed because Plaintiff failed to exhaust his administrative remedies. Dkt. 35. The Report and Recommendation also recommends, and Plaintiff concedes, that Washington

1 State Department of Corrections should be dismissed because it is not subject to suit under the §
2 1983 claims asserted here and Superintendent Elenor Vernell should be dismissed because she
3 did not personally participate in any alleged constitutional violation. *Id.* The Report and
4 Recommendation also recommends that the Court not impose a strike under 28 U.S.C. § 1915(g).
5 *Id.*

6 The Report and Recommendation (Dkt. 35) should be adopted and the Complaint
7 dismissed for failure to exhaust his administrative remedies. Plaintiff's objections are without
8 merit. In his objections, Plaintiff argues that he should not have to exhaust his administrative
9 remedies because Ms. Curl, the Grievance Program Coordinator, stated that an offender's
10 classification and placement cannot be addressed through the offender grievance program. Dkt.
11 36. The Report and Recommendation notes that while an offender's classification and placement
12 cannot be addressed through the offender grievance program, the record also indicates that there
13 is a separate appeals process for classification and placement decisions. Dkt. 35. Further,
14 Plaintiff acknowledges that he can use the grievance process for claims of retaliation. Dkt. 36.
15 There is no evidence that Plaintiff properly exhausted his administrative remedies. As stated in
16 the Report and Recommendation, Plaintiff has failed to properly exhaust his claims and his
17 Complaint should be dismissed. The dismissal should not count as a strike under 28 U.S.C. §
18 1915(g).

19 It is **ORDERED** that:

- 20 1) The Report and Recommendation (Dkt. 35) **IS ADOPTED**;
- 21 2) The Complaint **IS DISMISSED** for failure to exhaust administrative remedies;
- 22 3) The claims asserted against the Washington State Department of Corrections and
- 23 Elenor Vernell **ARE DISMISSED** on other grounds as well; and
- 24

1 4) The Clerk is directed to send uncertified copies of this Order to U.S. Magistrate Judge
2 Karen L. Strombom, all counsel of record and to any party appearing *pro se* at said
3 party's last known address.

4 Dated this 30th day of September, 2013.

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7 ROBERT J. BRYAN
8 United States District Judge
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